



April 10, 2009

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## ENGROSSED HOUSE BILL No. 1491

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DIGEST OF HB 1491 (Updated April 8, 2009 1:00 pm - DI 106)

**Citations Affected:** IC 3-9; IC 33-25; IC 33-33; noncode.

**Synopsis:** St. Joseph superior court judges. Requires the nonpartisan election of superior court judges in St. Joseph County. Continues the terms of the St. Joseph superior court judges in office on June 30, 2009, until the date the judges' terms will end under the law in effect on June 30, 2009. Provides that a judge or a candidate for judge of the Saint Joseph superior court may not accept certain political contributions. Repeals provisions concerning judicial retention elections in St. Joseph County. Establishes the Sixth District of the court of appeals of Indiana as of January 1, 2011. Provides that the entire state constitutes the Sixth District.

**Effective:** July 1, 2009; January 1, 2011.

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(SENATE SPONSOR — CHARBONNEAU)

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January 14, 2009, read first time and referred to Committee on Courts and Criminal Code.  
February 5, 2009, reported — Do Pass.  
February 10, 2009, read second time, amended, ordered engrossed.  
February 11, 2009, engrossed.  
February 12, 2009, read third time, passed. Yeas 92, nays 3.

SENATE ACTION

March 3, 2009, read first time and referred to Committee on Judiciary.  
April 9, 2009, amended, reported favorably — Do Pass.

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EH 1491—LS 7577/DI 69+



April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1491

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-9-2-14 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 14. (a) A judge or candidate for judge of the St.**  
4 **Joseph superior court may not accept:**

5 (1) a contribution from any political party, political action  
6 committee, or regular party committee; or

7 (2) more than a total of:

8 (A) five hundred dollars (\$500) from one (1) individual;

9 (B) one thousand dollars (\$1,000) from two (2) or more  
10 individuals associated with one (1) law firm; or

11 (C) ten thousand dollars (\$10,000) in contributions from all  
12 sources;

13 to pay expenses connected with the judge's or candidate's  
14 candidacy.

15 SECTION 2. IC 33-25-1-1 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. The court of  
17 appeals consists of ~~fifteen (15)~~ **eighteen (18)** judges, who serve for the

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hearing and decision of causes in ~~five (5)~~ **six (6)** geographic districts described in section 2 of this chapter under Article 7, Section 5 of the Constitution of the State of Indiana.

SECTION 3. IC 33-25-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 2. Indiana is divided into ~~five (5)~~ **six (6)** geographic districts, which shall be designated as the "court of appeals - First District; Second District; Third District; Fourth District; ~~and~~ Fifth District; **and Sixth District**" as follows:

(1) First District: Bartholomew, Boone, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Dubois, Fayette, Floyd, Fountain, Franklin, Gibson, Greene, Hancock, Harrison, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and Wayne.

(2) Second District: Adams, Blackford, Carroll, Cass, Clinton, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Marion, Miami, Tippecanoe, Tipton, Wabash, Wells, and White.

(3) Third District: Allen, Benton, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben, Warren, and Whitley.

(4) The entire state constitutes the Fourth District.

(5) The entire state constitutes the Fifth District.

**(6) The entire state constitutes the Sixth District.**

SECTION 4. IC 33-25-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 3. (a) Judges of the First, Second, and Third Districts of the court of appeals must have resided in their respective districts before appointment to the court. However, judges of the court of appeals appointed before July 1, 1993, must reside in the district from which they are appointed.

(b) The following requirements apply to judges of the Fourth, ~~and~~ Fifth, **and Sixth** Districts of the court of appeals:

(1) One (1) judge must have resided in the First District before appointment to the court.

(2) One (1) judge must have resided in the Second District before appointment to the court.

(3) One (1) judge must have resided in the Third District before appointment to the court.

(c) When a vacancy is created in the court of appeals, the individual

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1 who is appointed by the governor to fill the vacancy must be a resident  
2 of the district in which the vacancy occurred.

3 SECTION 5. IC 33-33-71-5 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) There is  
5 established a superior court in St. Joseph County.

6 (b) The court consists of eight (8) judges, **who shall be elected in**  
7 **nonpartisan elections every six (6) years in St. Joseph County as**  
8 **provided in section 5.3 of this chapter.**

9 (c) **The term of a judge begins January 1 following the judge's**  
10 **election and ends December 31 following the election of the judge's**  
11 **successor.**

12 SECTION 6. IC 33-33-71-5.3 IS ADDED TO THE INDIANA  
13 CODE AS A NEW SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2009]: Sec. 5.3. (a) **Each of the eight (8) St.**  
15 **Joseph superior court judges shall be elected in nonpartisan**  
16 **elections every six (6) years.**

17 (b) During the period under IC 3-8-2-4 in which a declaration  
18 of candidacy may be filed for a primary election, a person who  
19 desires to become a candidate for one (1) of the eight (8) judgeships  
20 described in subsection (a) must file with the election division a  
21 declaration of candidacy:

- 22 (1) adapted from the form prescribed under IC 3-8-2;
- 23 (2) signed by the candidate; and
- 24 (3) that designates which judgeship the candidate seeks. A  
25 declaration that does not include the designation shall be  
26 rejected by the election division or by the Indiana election  
27 commission under IC 3-8-1-2.

28 (c) To be eligible for election under this section, a candidate for  
29 a judgeship must be:

- 30 (1) a resident of St. Joseph County; and
- 31 (2) admitted to the practice of law in Indiana.

32 (d) If a person:

- 33 (1) files a declaration of candidacy under subsection (b); and
- 34 (2) subsequently ceases to be a candidate after the final date  
35 for filing a declaration under subsection (b);

36 the election division may accept the filing of additional declarations  
37 of candidacy for that judgeship until not later than noon August 1.

38 (e) All candidates for each respective judgeship shall be listed on  
39 the general election ballot:

- 40 (1) in the form prescribed by IC 3-11; and
- 41 (2) without party designation.

42 The candidate who receives the highest number of votes for each

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1 **judgeship shall be elected to that office.**

2 **(f) IC 3, where not inconsistent with this chapter, applies to**  
3 **elections under this chapter.**

4 SECTION 7. IC 33-33-71-36 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 36. (a) When a vacancy  
6 occurs in the St. Joseph superior court **created by the departure of a**  
7 **judge before the expiration of the judge's term of office**, the clerk  
8 of the court shall promptly notify the chairman of the commission of  
9 the vacancy. The chairman shall call a meeting of the commission  
10 within ten (10) days following this notice. The commission shall  
11 submit its nominations of five (5) candidates for each vacancy and  
12 certify them to the governor as promptly as possible, and not later than  
13 sixty (60) days after the vacancy occurs. When it is known that a  
14 vacancy will occur at a definite future date within the term of the  
15 serving governor, but the vacancy has not yet occurred, the clerk shall  
16 notify the commission immediately. The commission may within fifty  
17 (50) days of the notice of vacancy make its nominations and submit to  
18 the governor the names of five (5) persons nominated for the  
19 forthcoming vacancy.

20 (b) Meetings of the commission shall be called by the chairman or,  
21 if the chairman fails to call a necessary meeting, upon the call of any  
22 four (4) members of the commission. The chairman, whenever the  
23 chairman considers a meeting necessary, or upon the request by any  
24 four (4) members of the commission for a meeting, shall give each  
25 member of the commission at least five (5) days written notice by mail  
26 of the time and place of every meeting unless the commission at its  
27 previous meeting designated the time and place of its next meeting.

28 (c) Meetings of the commission must be held at a place in the St.  
29 Joseph County courthouse in South Bend as the clerk of the St. Joseph  
30 superior court may arrange.

31 (d) The commission shall act only at a meeting and may act only by  
32 the concurrence of a majority of its members attending a meeting. Four  
33 (4) members are required to constitute a quorum at a meeting. The  
34 commission may adopt reasonable and proper rules and regulations for  
35 the conduct of its proceedings and the discharge of its duties.

36 SECTION 8. IC 33-33-71-40 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. (a) A vacancy  
38 occurring in the St. Joseph superior court **created by the departure of**  
39 **a judge before the expiration of the judge's term of office** shall be  
40 filled by appointment of the governor from a list of nominees presented  
41 to the governor by the judicial nominating commission. If the governor  
42 fails to make an appointment from the list within sixty (60) days from

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the day it is presented to the governor, the appointment shall be made by the chief justice or the acting chief justice of the supreme court from the same list presented to the governor.

(b) The governor shall make all appointments to the St. Joseph superior court without regard to the political affiliation of any of the nominees submitted to the governor. In the interest of justice, the governor shall consider only those qualifications of the nominees included in section 37 of this chapter.

(c) If the St. Joseph County judicial nominating commission, by a vote of any five (5) of its members, determines that, of the persons considered for any existing or expected vacancy in the St. Joseph superior court, less than five (5) are qualified for judicial office, within the scope of this chapter, the commission shall certify that determination to the governor together with the name or names of the person or persons found to be qualified under this chapter. In that event, the governor, chief justice, or acting chief justice shall make the selection or, if only one (1) name is submitted, make the appointment.

SECTION 9. IC 33-33-71-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 41. (a) An appointment by the governor, chief justice, or acting chief justice, as required by section 40 of this chapter, to the St. Joseph County superior court shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if a vacancy does not exist on the date of the appointment.

**(b) A judge appointed under section 40 of this chapter serves during the unexpired part of the judge's predecessor's term in office.**

SECTION 10. IC 33-33-71-68 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 68. (a) Whenever a judge of a St. Joseph County court is retired by the supreme court under this chapter and on the grounds set forth in ~~sections 44 and~~ **section 46** of this chapter, the judge is considered to have retired voluntarily. In these situations, this chapter may not be construed to authorize any encroachment upon or impairment of any rights of the judge or the judge's surviving spouse under any constitutional or statutory retirement program.

(b) A judge of a St. Joseph County court who is removed from office by the supreme court on those grounds set forth in ~~sections 44 and~~ **section 46** of this chapter is ineligible for judicial office and, pending further order of the supreme court, shall be suspended from the practice of law in Indiana.

SECTION 11. THE FOLLOWING ARE REPEALED [EFFECTIVE

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JULY 1, 2009]: IC 33-33-71-42; IC 33-33-71-43; IC 33-33-71-44.

SECTION 12. [EFFECTIVE JULY 1, 2009] (a) Notwithstanding the amendment and repeal of provisions in IC 33-33-71 by this act, the term of a judge in office in the St. Joseph County superior court on June 30, 2009, does not terminate until the date that the term would have terminated under the law in effect on June 30, 2009.

(b) The initial nonpartisan election under IC 33-33-71, as amended by this act, to fill a judge's position on the St. Joseph County superior court is the general election immediately preceding the date on which the term of the judge occupying the position on June 30, 2009, would have terminated under the law in effect on June 30, 2009.

(c) This SECTION expires January 2, 2015.

SECTION 13. [JANUARY 1, 2010] (a) The judicial nominating commission shall, in accordance with IC 33-27-3, nominate three (3) candidates for each of the three (3) judgeships for the court of appeals - Sixth District created by IC 33-25-1, as amended by this act. The commission shall submit the nominations to the governor before November 1, 2010.

(b) The governor shall appoint the three (3) initial judges of the court of appeals - Sixth District from the list of nominees submitted by the judicial nominating commission before January 1, 2011. The effective date of the appointments is January 1, 2011.

(c) The Indiana department of administration, with the approval of the chief judge of the court of appeals, shall arrange for facilities for the court of appeals - Sixth District in Indianapolis before January 1, 2011.

(d) This SECTION expires January 2, 2011.

SECTION 14. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1491, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

PIERCE, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1491 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 3-9-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 14. (a) A judge or candidate for judge of the St. Joseph superior court may not accept:**

- (1) a contribution from any political party, political action committee, or regular party committee; or**
- (2) more than a total of:**

- (A) five hundred dollars (\$500) from one (1) individual;**
- (B) one thousand dollars (\$1,000) from two (2) or more individuals associated with one (1) law firm; or**
- (C) ten thousand dollars (\$10,000) in contributions from all sources;**

**to pay expenses connected with the judge's or candidate's candidacy."**

Re-number all SECTIONS consecutively.

(Reference is to HB 1491 as printed February 6, 2009.)

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Report of the Senate  
Committee on Ethics

Madam President: Pursuant to Senate Rule 94, the Senate Committee on Ethics met on March 23, 2009, to render an advisory opinion with regard to the question raised by Senator Zakas about his participation in the upcoming votes on House Bill 1491 due to a potential conflict of interest.

The Senate Committee on Ethics has considered the facts presented by Senator Zakas and hereby concludes that there is no conflict of interest that would prevent Senator Zakas from participating in all debate and votes pertaining to House Bill 1491.

The vote of the Committee was 6-0

DILLON, Chairperson

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1491, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 2. IC 33-25-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. The court of appeals consists of ~~fifteen (15)~~ **eighteen (18)** judges, who serve for the hearing and decision of causes in ~~five (5)~~ **six (6)** geographic districts described in section 2 of this chapter under Article 7, Section 5 of the Constitution of the State of Indiana.

SECTION 3. IC 33-25-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 2. Indiana is divided into ~~five (5)~~ **six (6)** geographic districts, which shall be designated as the "court of appeals - First District; Second District; Third District; Fourth District; ~~and Fifth District;~~ **and Sixth District**" as follows:

(1) First District: Bartholomew, Boone, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Dubois, Fayette, Floyd, Fountain, Franklin, Gibson, Greene, Hancock, Harrison, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley,

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Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and Wayne.

(2) Second District: Adams, Blackford, Carroll, Cass, Clinton, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Marion, Miami, Tippecanoe, Tipton, Wabash, Wells, and White.

(3) Third District: Allen, Benton, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben, Warren, and Whitley.

(4) The entire state constitutes the Fourth District.

(5) The entire state constitutes the Fifth District.

**(6) The entire state constitutes the Sixth District.**

SECTION 4. IC 33-25-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 3. (a) Judges of the First, Second, and Third Districts of the court of appeals must have resided in their respective districts before appointment to the court. However, judges of the court of appeals appointed before July 1, 1993, must reside in the district from which they are appointed.

(b) The following requirements apply to judges of the Fourth, ~~and~~ Fifth, ~~and Sixth~~ Districts of the court of appeals:

(1) One (1) judge must have resided in the First District before appointment to the court.

(2) One (1) judge must have resided in the Second District before appointment to the court.

(3) One (1) judge must have resided in the Third District before appointment to the court.

(c) When a vacancy is created in the court of appeals, the individual who is appointed by the governor to fill the vacancy must be a resident of the district in which the vacancy occurred."

Page 5, after line 9, begin a new paragraph and insert:

"SECTION 13. [JANUARY 1, 2010] **(a) The judicial nominating commission shall, in accordance with IC 33-27-3, nominate three (3) candidates for each of the three (3) judgeships for the court of appeals - Sixth District created by IC 33-25-1, as amended by this act. The commission shall submit the nominations to the governor before November 1, 2010.**

**(b) The governor shall appoint the three (3) initial judges of the court of appeals - Sixth District from the list of nominees submitted by the judicial nominating commission before January 1, 2011. The effective date of the appointments is January 1, 2011.**

**(c) The Indiana department of administration, with the approval of the chief judge of the court of appeals, shall arrange**

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**for facilities for the court of appeals - Sixth District in Indianapolis  
before January 1, 2011.**

**(d) This SECTION expires January 2, 2011.**

**SECTION 14. An emergency is declared for this act."**

and when so amended that said bill do pass.

(Reference is to HB 1491 as reprinted February 11, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 5.

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